

TOWN OF ARLINGTON
BOARD OF HEALTH

RULES AND REGULATIONS RESTRICTING SMOKING AND DISTRIBUTION OF
TOBACCO AND TOBACCO PRODUCTS WITHIN THE TOWN OF ARLINGTON

SECTION 1.0 AUTHORITY AND PURPOSE

In accordance with the authority granted by the Massachusetts General Laws Chapter 111, Section 31, the Arlington Board of Health hereby adopts the following rules and regulations restricting the use, sale, vending and distribution of tobacco and tobacco products within the Town of Arlington. These regulations are being adopted for the following reasons:

There exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, various cardiac diseases, adverse birth outcomes and allergies and irritations to the eyes, nose and throat for both the smoker and non smoker exposed to secondhand smoke.

Ongoing research attests to the health hazards of secondhand smoke. According to the federal government, 83% of worker health complaints related to indoor air quality are linked to smoking. Elimination of secondhand smoke will substantially reduce adverse impacts including, but not limited to severe headaches, upper respiratory problems, cancer and heart disease.

The use of so-called smokeless tobacco has been shown to cause gum disease, cancer and heart-related disease.

Furthermore, tobacco is extremely addictive. Nearly all first use of tobacco occurs before high school graduation and more than 3,000 young people begin smoking every day in the United States. Massachusetts youths in particular begin smoking at very young ages. Due to the addictiveness of tobacco and the long range health effects of tobacco use, easy access to cigarettes by minors is of special concern.

Each day in Massachusetts:

- 29 people die of tobacco-related illnesses
- Pregnant mothers who smoke give birth to low birth weight babies at twice the rate for non-smoking mothers
- 100 children begin to smoke cigarettes
- 1,062,588 residents smoke and fill the air with carcinogenic tobacco smoke
- 3 people die as a result of involuntary exposure to environmental tobacco smoke (ETS)
- 11 children contract lower respiratory infections due to exposure to secondhand smoke

The Board further finds cigarette smoking and other tobacco use by minors to be a continuing problem with grave public consequences such as:

- The Surgeon General has concluded that nicotine is an addictive substance and that minors, in particular, are at risk from the addictive effect of nicotine.
- 75% of current smokers became addicted to tobacco by age 18
- Tobacco is a “gateway drug”, that is, the use of tobacco products often precedes the use of other illegal drugs.

SECTION 2.0 DEFINITIONS

As used in these regulations:

Bar: An establishment whose business is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

Employee means any individual who performs services for an employer in return for wages or profit, including contractors and consultants and not-for-profit volunteers.

Food Service Establishment including restaurants means a place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes such places regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food.

Public Place means an enclosed, indoor area when open to and used by the general public, including but not limited to the following facilities: atriums, auditoriums, automatic teller machines, automatic repair and maintenance establishments, bars; common areas of any housing structure with four or more dwelling units, entrance ways, food service establishments; gasoline stations, licensed childcare locations including childcare homes; educational facilities including classrooms and private schools; elevators accessible to the public; clinics, hospitals, rest homes and nursing homes; retirement homes and common areas of any federal, state or locally subsidized housing complex; locations where health care is provided; medical facilities; mobile food units; restrooms open to the public; retail stores; retail food stores; restaurants; game arcades; sports arenas; hair cutting and cosmetology establishments; kiosks; laundromats; libraries; municipal buildings; theaters; concert halls; public transit facilities; workplaces; and any clubs, rooms or halls when used for public meetings. A room or hall used for a private social function in which the sponsor of the function has control over the seating arrangements or other use of the hall shall not be construed as a public place.

Restaurant means any establishment serving food for consumption on the premises. This includes cafeterias and cafeterias in the workplace.

Retail Food Store means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes bakeries , delicatessens and convenience stores.

Retail Store means any establishment selling goods or articles or personal services to the public.

Self Service Display means a display from which individual packs or cartons of tobacco products may be selected by a customer.

Smoking means the lighting of any cigar, cigarette, pipe or other tobacco product or having possession of any lighted cigar, cigarette, pipe or other tobacco product.

Tobacco Product means cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or tobacco in any of its forms.

Workplace means any area within a structure or portion thereof in which two (2) or more employees or volunteers perform services for their employer. The Workplace shall include any space, room, or group of rooms, under the control of a public or private employer or building manager, which employees normally frequent during the course of employment including, but not limited to, work areas, employee lounges and restrooms, conference rooms, hallways, stairways and entrance ways.

SECTION 3.0 PROHIBITION ON SMOKING IN PUBLIC PLACES

No person shall smoke in any public place.

(A) Restaurant and Food Service Establishments. The prohibition on smoking in public places shall apply to all food service establishments including restaurants. This prohibition includes all outdoor seating and take out food service establishments.

(B) Public Transit Facilities. The prohibition on smoking in public places shall apply to public and private transportation facilities and vehicles providing service to the public free of charge or for a fee including ambulances, buses, taxis and other means of public mass transit while operating within boundaries of the Town of Arlington.

(C) Retail Food Stores and Retail Stores. The prohibition on smoking in public places shall apply to retail food stores and retail stores.

(D) Schools. It shall be unlawful for any person, including all teaching and non-teaching personnel to smoke in any public or private school, on school grounds or school buses at any time.

(E) Implementation. The proprietor(s) or other person(s) in charge of a place covered by this regulation shall prevent smoking in non-smoking areas by:

(1) Conspicuously posting a notice or sign at each entrance to the public place indicating smoking is prohibited therein. In addition, conspicuously posting “No Smoking” signs, or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed by a red circle with a red bar across it) throughout the establishment.

(2) Using any other means which may be appropriate and reasonable to enforce these regulations.

(3) Any proprietor(s) must report violations of any regulations to the Board of Health.

(F) No person shall smoke within 15 feet of all exits/entrances of public and private schools, child care facilities and facilities where health care is provided.

SECTION 4.0 PROHIBITION ON SMOKING IN THE WORKPLACE

(A) It shall be unlawful for any person to smoke in any workplace.

(B) Each person having control of the premises upon which smoking is prohibited by this regulation, or his or her agent or designee, shall conspicuously display upon the premises signs clearly conveying the regulation.

(C) It shall be unlawful for any person having control of any premises upon which smoking is prohibited by this regulation to knowingly permit, or for his or her agent to knowingly permit, a violation of this regulation.

(D) Any employer or building manager must report violations of any regulations to the Board of Health.

SECTION 5.0 PUBLIC PLACES/WORKPLACE ENFORCEMENT

(A) Any person who smokes in a non-smoking area shall be subject to a fine of \$100.00 for each violation.

(B) Any proprietor(s) or other person(s) in charge of a public place or workplace who fail(s) to comply with these regulations shall be subject to:

(1) A fine of two hundred dollars (\$200.00) for each day of violation.

(C) In addition to the remedies provided by (A) and (B) above, the Board of Health may apply for injunctive relief to enforce the provisions of this regulation in any court of competent jurisdiction.

(D) The Board of Health or its designated agent(s) shall enforce these regulations.

The Board of Health may depart from these guidelines at its discretion.

SECTION 6.0 OTHER APPLICABLE LAWS

These regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulation or statutes.

SECTION 7.0 TOBACCO SALES TO MINORS PROHIBITED

(A) Sales to Minors. In conformance with Massachusetts General Laws, Chapter 270, Section 6, any establishment who sells cigarettes, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of eighteen or, not being his parent or guardian, gives a cigarette, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of eighteen, shall be punished, upon conviction, by a fine of not less than one hundred dollars (\$100.00) for the first offense, not less than two hundred dollars (\$200.00) for the second offense and not less than three hundred dollars (\$300.00) for any third or subsequent offense, upon conviction.

(B) Posting State Law. In conformance with Massachusetts General Laws, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6 shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell cigarettes at retail. The notice to be posted shall be that notice provided by the Massachusetts Department of Public Health. Such notice shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of single cigarette package sales in such a manner so that it may be readily seen by a person standing at or approaching the cash register. Such note shall directly face the purchaser and shall not be obstructed from view or placed at a height of no less than 4 feet or more than 9 feet from the floor.

(C) Tobacco Sales Permit Required. No person, firm, corporation, establishment or agency shall sell tobacco at retail within the Town of Arlington without a Tobacco Sales Permit issued by the Board of Health. Each Tobacco Sales Permit shall be renewed on an annual basis. An application for a Tobacco Sales Permit shall be filed within 30 days following the effective date of this Board of Health regulation on a form provided by the Arlington Board of Health.

The fee for an initial Tobacco Sales Permit shall be determined by the Board of Health.

The fee for the annual permit shall be \$500.00, renewable on January 1.

The Tobacco permit must be posted in conspicuous view of the public.

Each location shall require a separate Tobacco Sales Permit.

(D) Sales Personnel. No person or entity selling tobacco products shall allow anyone to sell cigarettes or other tobacco products until such employee reads the Board of Health regulations and state laws regarding sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the Board of Health, that (s)he will uphold the regulations.

(E) Vending Machines. No person shall install or maintain a vending machine to distribute or sell tobacco products within the Town of Arlington.

(F) Self Service Displays. It shall be unlawful to sell or distribute any tobacco product through a self service display within the Town of Arlington, unless said self service display is located in a facility where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time.

(G) Out-of-Package Sales Prohibited. No person or entity may sell or cause to be sold or distribute or cause to be distributed, any tobacco products out of original package.

(H) Enforcement Policy. The Board of Health may conduct tests of compliance by having persons under the age of 18 attempt to purchase tobacco products.

First Violation: Tobacco Sales Permit shall be suspended for seven (7) consecutive business days.

Second Violation: If a second violation occurs within 12 months of the first violation, the Tobacco Sales Permit shall be suspended for fourteen (14) consecutive business days.

Third or Subsequent Violations: If a third or subsequent violation occurs within 12 months of the second violation, the Tobacco Sales Permit shall be suspended for a minimum of thirty (30) consecutive business days.

The Board may decline to renew any permit at the end of the permit period.

The Board of Health of the Town of Arlington shall provide written notice to the tobacco permit holder of the intent to suspend or not to renew any tobacco permit issued by the Board of Health. The notice shall contain the reasons for the suspension or non-renewal and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permittee shall have an opportunity to be heard at such hearing and shall be notified of the Board decision and reasons in writing.

(I) Enforcement of these regulations shall be by the Board of Health or its designated agents.

SECTION 8.0

The Board of Health may depart from any provision of these regulations with respect to any particular case when the enforcement thereof would do manifest injustice, provided that any such decision shall not conflict with the express purpose of these regulations nor pose substantial risk to the public health.

SECTION 9.0 SEVERABILITY

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

SECTION 10.0

EFFECTIVE DATE: JUNE 15, 1995 (REVISED: September 15, 1999)
(REVISED: Mar. 26, 1997)
(REVISED: November 10, 2003)

These regulations shall be effective as of (6/15/95)

Dr. Carole E. Allen

Mr. Gregory Leonardos

Mr. William Mark Fingerle